Supreme Court, U.S.
FILED
NOV 17 1995
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CASE NO. 95-460

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

JOHN C. HUME, PRO SE - PETITIONER

VS.

HAROLD STERLING, INDIVIDUALY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER BOTH COURTS BELOW CORRECTLY HELD THAT THE U.S. DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S COMPLAINT PURSUANT TO 28 U.S.C. §1341, THE TAX INJUNCTION ACT.

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OPINIONS BELOW

The March 14, 1995 opinion of the United States Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, is case no. 94-6103, is unpublished and is reprinted in the separate Appendix to this Petition, pp. 13-17. The prior Opinion of the United States District Court for the Western District of Tennessee entered on July 21, 1994 is case no. 94-2154 GA, is unpublished and is reported in the separate Appendix to this Petition, pp. 1-7.

JURISDICTION

The judgment of the Court of Appeals was entered on March 14, 1995. The Petition for Writ of Certiorari was filed on June 12, 1995; however, it was not docketed until September 18, 1995. The Court extended Respondents' time to file their Brief in Opposition to 20 November 1995. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

28 U.S.C. §1341

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

Tenn. Code Ann. §67-5-1511

(a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board subject to judicial review, and taxes shall

be collected upon the assessments determined and fixed by the board.

(b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in a chancery court of Davidson County or the county where the disputed assessment was made.

STATEMENT OF THE CASE

Certain property owned by Petitioner in Shelby County, Tennessee was reappraised in 1991 (Pet. 2-3). The reappraised values were higher than before and Petitioner contested the reappraisal. Petitioner alleges that he interviewed with representatives from the Shelby County Tax Assessor's Office, filed appeals with the Shelby County Board of Equalization, filed appeals with the State Board of Equalization and participated in a State of Tennessee Assessment Appeals Commission Hearing (Pet. 3). Petitioner then filed a Complaint in the United States District Court challenging the residential property assessment method employed in said reappraisals on the grounds that it violated his constitutional rights (Pet. App. 1-2).

Respondents filed a Motion to Dismiss on the grounds the District Court lacked subject matter jurisdiction pursuant to 28 U.S.C. §1341, the Tax Injunction Act, in that Petitioner must first file a lawsuit in Tennessee State Court pursuant to T.C.A. §67-5-1511. The District Court granted Respondents' Motion noting that since T.C.A. §67-5-1511 provided judicial review of property tax issues in Tennessee State Court, Petitioner had a "plain, speedy and efficient remedy" and, therefore, the Tax Injunction Act deprived the District Court of subject matter jurisdiction (Pet. App. 3-7).

The Petitioner appealed the District Court's ruling of his Complaint but, on March 14, 1995, the United States Court of Appeals for the Sixth Circuit upheld the District Court (Pet. App. 17). The Court

of Appeals also noted that Petitioner "has a speedy and efficient remedy in the State courts of Tennessee to challenge his property assessment." (Pet. App. 16)

The Petitioner is now before this Court seeking review on Writ of Certiorari.

SUMMARY OF ARGUMENT

28 U.S.C. §1341 bars lawsuits in Federal Court challenging State tax systems where a "plain, speedy and efficient remedy" exists in the courts of said State. The United States Supreme Court in Fair Assessment in Real Estate Association vs. McNary, 454 U.S. 100 (1981) held that §1341 and the "principle of comity" bar lawsuits like Petitioner's which are brought under 42 U.S.C. §1983 to address an allegedly unconstitutional administration of a state tax system. Both lower courts here have correctly held that T.C.A. §67-5-1511 provides Petitioner with a plain, speedy and efficient remedy for challenging Shelby County's reappraisal method and therefore the Federal Courts lack subject matter jurisdiction over his Complaint. (Pet.

App. 6-7 and 16-17).

Petitioner has not shown that the Court of Appeals' decision conflicts with opinions of this Court or any other Courts of Appeals. Petitioner has not shown that this Court's supervision is necessary in this matter. Further, this Court has already decided questions raised in the Petition. Petitioner has failed to show the existence of any special and important reasons why his Petition for Writ of Certiorari should be granted and therefore the Petition should be denied.

ARGUMENT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE COURT OF APPEALS' DECISION AFFIRMING THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S COMPLAINT PURSUANT TO 28 U.S.C. §1341, THE TAX INJUNCTION ACT, IS CORRECT AND THERE IS NO CONFLICT OR ANY OTHER BASIS FOR FURTHER REVIEW BY THIS COURT.

28 U.S.C. §1341 states:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

In Fair Assessment of Real Estate Association v. McNary, 454 U.S. 100 (1981), this Court applied §1341 in the context of a damages action brought under 42 U.S.C. §1983 to redress the allegedly unconstitutional administration of a state tax system. In McNary, Petitioners filed a

Complaint arguing that County and State tax personnel and entities had "... deprived them of equal protection and due process of law by unequal taxation of real property." Id. at 106. The District Court held, and the Eighth Circuit affirmed, that the lawsuit was barred by both the Tax Injunction Act and the principle of comity. Id. at 102. This Court granted certiorari and affirmed. Id.

The McNary court noted that a §1983 damages action would be unduly intrusive into the state tax scheme and would be unduly disruptive of the enforcement of the scheme. Id. at 113-114. The Court stated that it considered "... such interference to be contrary to '[t]he scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts.'" (citations

omitted) Id. at 115-116. It therefore held that:

> ... taxpayers are barred by the principle of comity from asserting §1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that these remedies are plain, adequate, and complete and may ultimately seek review of the state decisions in this Court.

Id. at 116.

In the case at bar, Petitioner filed a §1983 damages action against certain county officials to redress the alleged unconstitutionality of the relevant method of property appraisal for tax purposes (Pet. App. 1-2). The District Court concluded that the "... action implicates

the Tax Injunction Act..." (Pet. App. 3). The District Court further concluded that T.C.A. §67-5-1511, which provides for judicial review of state decisions regarding property taxes, is a "plain, speedy, and efficient remedy" for Petitioner within the meaning of the Tax Injunction Act (Pet. App. 6). On this basis, the District Court correctly dismissed the Complaint as barred by the Tax Injunction Act. In his appeal to the U.S. Court of Appeals, Petitioner did not challenge the District Court's conclusion that §67-5-1511 constitutes a "plain, speedy, and efficient remedy." On the contrary, Petitioner's only rejoinder is that filing a lawsuit in state court would be "unwise" (R.8: Memorandum at 2). Petitioner repeats that argument here by stating that filing a lawsuit in state

court would be unnecessarily "costly in fees and time" (Pet. App. 4).

Petitioner now also asserts that "... I could plainly not receive a plain, speedy and efficient remedy in the state of Tennessee..." (Pet. 4). Petitioner cites Louisville and Nashville R. Co. v. Public Serv. Com., 249 F. Supp. 894 (M.D. Tenn. 1966) which, in turn, cites Hillsborough Twp. v. Cromwell, 326 U.S. 620 (1946) for the proposition that "... [in] these cases state remedies were held inadequate so as not to preclude federal jurisdiction under 1341 ..." (Pet. 4). However, since 1966, when Louisville, supra, was decided, Tennessee has: amended its Constitution regarding property taxation; adopted the Tennessee Uniform Administrative Procedures Act regarding review of administration decisions; and, expanded the remedy

available to those challenging tax decisions. See Snow v. The City of Memphis, 527 S.W.2d 55 (Tenn. 1975); see also T.C.A. §§4-5-101, et seq.; see also Richardson v. Assessment Appeals Com.'n, 828 S.W.2d 403 (Tenn. App. 1991). The conclusion in Louisville, supra, regarding the remedy available in 1966 clearly does not apply to the remedy available now; a remedy both courts below held is plain, speedy and efficient. Regardless, Petitioner's stated purpose in this litigation has been to have "... the U.S. Supreme Court decision in Nordlinger v. Hahn [_____ U.S. _____, 112 S.Ct. 2326 (1992) ruled] ... the law of the land and assess my property as the court instructed. It is the only intelligent way to assess property for tax purposes" (App. Brief at p.2). The Nordlinger court merely held

that the State of California's method for assessing property *in California* does not violate the Equal Protection Clause. See Nordlinger, supra, at 2332, 2333 and 2336. Nordlinger did not "instruct" other states to substitute their assessment methods for that of California. Both courts below thus deemed Nordlinger "not applicable" to Petitioner's case (Pet. App. 6-7 and 16).

Lastly, Petitioner apparently raises an issue that is currently on appeal in the United States Court of Appeals for the Sixth Circuit -- the awarding of attorneys' fees to Respondents. After the Sixth Circuit affirmed the District Court's dismissal of Petitioner's Complaint, the District Court granted Respondent's Motion for Attorneys' Fees as the prevailing party (Pet. App. 27-29). Petitioner has appealed that award and the Sixth Circuit has yet to

decide the appeal. This Court therefore lacks jurisdiction at this point to consider the District Court's awarding of attorneys' fees.

CONCLUSION

The Court of Appeals' decision affirming the District Court's dismissal of Petitioner's Complaint does not conflict with any decision of this Court or any other Court of Appeals. In fact, the decision follows Supreme Court precedent. Further, there is no reason for this Court to exercise its supervisory authority here. No special or important reasons exist for granting this Petition for Writ of Certiorari and therefore Respondents respectfully request the Petition be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that three copies of the foregoing have been mailed postage prepaid to Mr. John Hume, 2176 Jefferson Avenue, Memphis, Tennessee 38104, on this the 17TH day of November, 1995.

_____
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